

## SENATE SUBSTITUTE

FOR

## HOUSE COMMITTEE SUBSTITUTE

FOR

## HOUSE BILL NO. 73

## AN ACT

To repeal section 166.435, RSMo, and to enact in lieu thereof thirteen new sections relating to higher education savings programs.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

1           Section A. Section 166.435, RSMo, is repealed and thirteen  
2 new sections enacted in lieu thereof, to be known as sections  
3 166.435, 166.500, 166.505, 166.510, 166.515, 166.520, 166.525,  
4 166.530, 166.540, 166.545, 166.550, 166.555, and 166.556, to read  
5 as follows:

6           166.435. 1. Notwithstanding any law to the contrary, the  
7 assets of the savings program held by the board and the assets of  
8 any similar [savings program] programs sponsored, held, or  
9 otherwise authorized by law by this state or any other state or  
10 subdivision thereof and qualified pursuant to Section 529 of the  
11 Internal Revenue Code and any income therefrom shall be exempt  
12 from all taxation by the state or any of its political  
13 subdivisions. Income earned or received from the fund [by any  
14 participant or beneficiary shall not be subject to state] or any  
15 similar program sponsored, held, or otherwise authorized by law  
16 by this state or any other state or subdivision thereof and

1 qualified pursuant to Section 529 of the Internal Revenue Code by  
2 any participant or beneficiary shall not be subject to state  
3 income tax imposed pursuant to chapter 143, RSMo, and shall be  
4 eligible for any benefits provided in accordance with Section 529  
5 of the Internal Revenue Code. The exemption from taxation  
6 pursuant to this section shall apply only to assets and income  
7 maintained, accrued, or expended pursuant to the requirements of  
8 the [savings program established pursuant to sections 166.400 to  
9 166.455, the provisions of this section] programs sponsored,  
10 held, or otherwise authorized by law by this state or any other  
11 state or subdivision thereof and Section 529 of the Internal  
12 Revenue Code, and no exemption shall apply to assets and income  
13 expended for any other purposes. Annual contributions made to  
14 the savings program held by the board and any similar program  
15 sponsored, held, or otherwise authorized by law by this state up  
16 to and including eight thousand dollars for the tax year  
17 beginning on or after January 1, 2003, but before January 1,  
18 2004, for the participant taxpayer, shall be subtracted in  
19 determining Missouri adjusted gross income pursuant to section  
20 143.121, RSMo. Annual contributions made to the savings program  
21 held by the board and any similar program sponsored, held, or  
22 otherwise authorized by law by this state or any other state or  
23 subdivision thereof qualified pursuant to Section 529 of the  
24 Internal Revenue Code, up to and including [eight] two thousand  
25 dollars [made to the savings program] for the tax year beginning  
26 on or after January 1, 2004, but before January 1, 2005, four  
27 thousand dollars for the tax year beginning on or after January  
28 1, 2005, but before January 1, 2006, six thousand dollars for the

1 tax year beginning on or after January 1, 2006, but before  
2 January 1, 2007, eight thousand dollars for the tax year  
3 beginning on or after January 1, 2007, but before January 1,  
4 2008, and every tax year thereafter for the participant taxpayer,  
5 shall be subtracted [from] in determining Missouri adjusted gross  
6 income pursuant to section 143.121, RSMo.

7       2. If any deductible contributions to or earnings from any  
8 [savings account] such program referred to in this section are  
9 distributed and not used to pay qualified higher education  
10 expenses or are not held for the minimum length of time  
11 established by the [board] appropriate state or political  
12 subdivision authority, the amount so distributed shall be added  
13 to the Missouri adjusted gross income of the participant, or, if  
14 the participant is not living, the beneficiary.

15       3. The provisions of this section shall apply to tax years  
16 beginning on or after January 1, [1999] 2003.

17       166.500. Sections 166.500 to 166.556 shall be known and may  
18 be cited as the "Missouri Higher Education Deposit Program".

19       166.505. Notwithstanding the provisions of sections 166.400  
20 to 166.456 to the contrary, this program is established as a  
21 nonexclusive alternative to the Missouri higher education savings  
22 program and any participant may elect to participate in both  
23 programs subject to aggregate Missouri program limitations.

24       166.510. As used in sections 166.500 to 166.556, except  
25 where the context clearly requires another interpretation, the  
26 following terms mean:

27       (1) "Beneficiary", any individual designated by a  
28 participation agreement to benefit from payments for qualified

1 higher education expenses at an eligible educational institution;

2 (2) "Benefits", the payment of qualified higher education  
3 expenses on behalf of a beneficiary from a deposit account during  
4 the beneficiary's attendance at an eligible educational  
5 institution;

6 (3) "Board", the Missouri higher education deposit program  
7 board established in section 166.515;

8 (4) "CAMELS rating", the Capital, Assets, Management,  
9 Earnings, Liquidity, and Sensitivity rating system of the Federal  
10 Financial Institution Examination Counsel (FFIEC);

11 (5) "Eligible educational institution", an institution of  
12 postsecondary education as defined in Section 529(e)(5) of the  
13 Internal Revenue Code;

14 (6) "Financial institution", a depository institution and  
15 any intermediary that brokers certificates of deposits;

16 (7) "Internal Revenue Code", the Internal Revenue Code of  
17 1986, as amended;

18 (8) "Missouri higher education deposit program" or "deposit  
19 program", the program created pursuant to sections 166.500 to  
20 166.556;

21 (9) "Participant", a person who has entered into a  
22 participation agreement pursuant to sections 166.500 to 166.556  
23 for the advance payment of qualified higher education expenses on  
24 behalf of a beneficiary;

25 (10) "Participation agreement", an agreement between a  
26 participant and the board pursuant to and conforming with the  
27 requirements of sections 166.500 to 166.556; and

28 (11) "Qualified higher education expenses", the qualified

1 costs of tuition and fees and other expenses for attendance at an  
2 eligible educational institution, as defined in Section 529(e)(3)  
3 of the Internal Revenue Code, as amended.

4 166.515. 1. There is hereby created the "Missouri Higher  
5 Education Deposit Program". The program shall be administered by  
6 the Missouri higher education deposit program board which shall  
7 consist of the director of the Missouri division of finance who  
8 shall serve as chairman, the commissioner of the department of  
9 higher education, the commissioner of the office of  
10 administration, the commissioner of securities, and three private  
11 members appointed by the governor with the advice and consent of  
12 the senate who have demonstrable experience and knowledge in the  
13 areas of deposit rate determination and placement of depository  
14 certificates of deposit or other deposit investments. The three  
15 private members shall be appointed to serve for terms of four  
16 years from the date of appointment, with the exception of initial  
17 private members. Initial members shall serve terms as follows:  
18 one private member shall serve a two-year term; one private  
19 member shall serve a three-year term; and one private member  
20 shall serve a four-year term. Once the initial terms have been  
21 completed, all such private members may be appointed to serve for  
22 an additional four-year term. The members of the board shall be  
23 subject to the conflict of interest provisions in section  
24 105.452, RSMo. Any member who violates the conflict of interest  
25 provisions shall be removed from the board.

26 2. In order to establish and administer the deposit  
27 program, the board, in addition to its other powers and  
28 authority, shall have the power and authority to:

1       (1) Develop and implement the Missouri higher education  
2 deposit program and, notwithstanding any provision of sections  
3 166.500 to 166.556 to the contrary, the deposit programs and  
4 services consistent with the purposes and objectives of sections  
5 166.500 to 166.556;

6       (2) Promulgate reasonable rules and regulations and  
7 establish policies and procedures to implement sections 166.500  
8 to 166.556, to permit the deposit program to qualify as a  
9 qualified state tuition program pursuant to Section 529 of the  
10 Internal Revenue Code and to ensure the deposit program's  
11 compliance with all applicable laws;

12       (3) Develop and implement educational programs and related  
13 informational materials for participants, either directly or  
14 through a contractual arrangement with a financial institution or  
15 other entities for deposit educational services, and their  
16 families, including special programs and materials to inform  
17 families with children of various ages regarding methods for  
18 financing education and training beyond high school;

19       (4) Enter into an agreement with any financial institution,  
20 entity, or business clearinghouse for the operation of the  
21 deposit program pursuant to sections 166.500 to 166.556;  
22 providing however, that such institution, entity, or  
23 clearinghouse shall be a private for-profit or not-for-profit  
24 entity and not a government agency. No more than one board  
25 member may have a direct interest in such institution, entity, or  
26 clearinghouse. Such institution, entity, or clearinghouse shall  
27 implement the board's policies and administer the program for the  
28 board and with electing depository institutions and others;

1       (5) Enter into participation agreements with participants;

2       (6) Accept any grants, gifts, legislative appropriations,  
3 and other moneys from the state, any unit of federal, state, or  
4 local government or any other person, firm, partnership, or  
5 corporation for deposit to the account of the deposit program;

6       (7) Invest the funds received from participants in  
7 appropriate investment instruments to be held by depository  
8 institutions or directly deposit such funds in depository  
9 institutions as provided by the board and elected by the  
10 participants;

11       (8) Make appropriate payments and distributions on behalf  
12 of beneficiaries pursuant to participation agreements;

13       (9) Make refunds to participants upon the termination of  
14 participation agreements pursuant to the provisions, limitations,  
15 and restrictions set forth in sections 166.500 to 166.556 and the  
16 rules adopted by the board;

17       (10) Make provision for the payment of costs of  
18 administration and operation of the deposit program;

19       (11) Effectuate and carry out all the powers granted by  
20 sections 166.500 to 166.556, and have all other powers necessary  
21 to carry out and effectuate the purposes, objectives, and  
22 provisions of sections 166.500 to 166.556 pertaining to the  
23 deposit program;

24       (12) Procure insurance, guarantees, or other protections  
25 against any loss in connection with the assets or activities of  
26 the deposit program, as the members in their best judgment deem  
27 necessary;

28       (13) To both adopt and implement various methods of

1 transferring money by electronic means to efficiently transfer  
2 funds to depository institutions for deposit, and in addition or  
3 in the alternative, to allow funds to be transferred by agent  
4 agreements, assignment, or otherwise, provided such transfer  
5 occurs within two business days;

6 (14) To both adopt and implement methods and policies  
7 designed to obtain the maximum insurance of such funds for each  
8 participant permitted and provided for by the Federal Deposit  
9 Insurance Corporation, or any other federal agency insuring  
10 deposits, and taking into consideration the law and regulation  
11 promulgated by such federal agencies for deposit insurance.

12 3. Four members of the board shall constitute a quorum. No  
13 vacancy in the membership of the board shall impair the right of  
14 a quorum to exercise all the rights and perform all the duties of  
15 the board. No action shall be taken by the board except upon the  
16 affirmative vote of a majority of the members present, except as  
17 otherwise provided by law.

18 4. The board shall meet within the state of Missouri at the  
19 time set at a previously scheduled meeting or by the request of  
20 any four members of the board. Notice of the meeting shall be  
21 delivered to all other trustees in person or by depositing notice  
22 in a United States post office in a properly stamped and  
23 addressed envelope not less than six days prior to the date fixed  
24 for the meeting. The board may meet at any time by unanimous  
25 mutual consent. There shall be at least one meeting in each  
26 quarter.

27 5. The funds shall be invested only in those investments  
28 which a prudent person acting in a like capacity and familiar



1 with these matters would use in the conduct of an enterprise of a  
2 like character and with like aims, as provided in section  
3 105.688, RSMo, as a means to hold funds until they are placed in  
4 a Missouri depository institution as a deposit. The board may  
5 delegate to duly appointed representatives of financial  
6 institutions authority to act in place of the board in the  
7 investment and reinvestment of all or part of the moneys and may  
8 also delegate to such representatives the authority to act in  
9 place of the board in the holding, purchasing, selling,  
10 assigning, transferring, or disposing of any or all of the  
11 investments in which such moneys shall have been invested, as  
12 well as the proceeds of such investments and such moneys,  
13 however, such investments shall be limited to certificates of  
14 deposit and other deposits in federally insured depository  
15 institutions. Such representatives shall be registered as  
16 "qualified student deposit advisors on section 529 plans" with  
17 the board and such board shall, by rule, develop and administer  
18 qualification tests from time to time to provide representatives  
19 the opportunity to qualify for this program. In exercising or  
20 delegating its investment powers and authority, members of the  
21 board shall exercise ordinary business care and prudence under  
22 the facts and circumstances prevailing at the time of the action  
23 or decision. No member of the board shall be liable for any  
24 action taken or omitted with respect to the exercise of, or  
25 delegation of, these powers and authority if such member shall  
26 have discharged the duties of his or her position in good faith  
27 and with that degree of diligence, care, and skill which a  
28 prudent person acting in a like capacity and familiar with these

1 matters would use in the conduct of an enterprise of a like  
2 character and with like aims.

3 6. No board member or employee of the deposit program shall  
4 personally receive any gain or profit from any funds or  
5 transaction of the deposit program as a result of his or her  
6 membership of the board. Any board member, employee, or agent of  
7 the deposit program accepting any gratuity or compensation for  
8 the purpose of influencing such board member's, employee's, or  
9 agent's action with respect to choice of intermediary, including  
10 any financial institution, entity or clearinghouse, for the funds  
11 of the deposit program shall thereby forfeit the office and in  
12 addition thereto be subject to the penalties prescribed for  
13 bribery. However, a board member who is regularly employed  
14 directly or indirectly by a financial institution may state that  
15 institution's interest and absent himself from voting.

16 7. Depository institutions originating the deposit program  
17 shall be the agent of the board and offer terms for certificates  
18 of deposit and other deposits in such program as permitted by the  
19 board, subject to a uniform interest rate disclosure as defined  
20 in federal regulations of the Board of Governors of the Federal  
21 Reserve System, specifically Federal Reserve Regulation DD, as  
22 amended from time to time. The board shall establish various  
23 deposit opportunities based on amounts deposited and length of  
24 time held that are uniformly available to all depository  
25 institutions that elect to participate in the program, and the  
26 various categories of fixed or variable rates shall be the only  
27 interest rates available under this program. A depository  
28 institution that originates the deposit as agent for the board

1 and participates in the program shall receive back the  
2 certificate of deposit or other deposit, provided such depository  
3 institution has a CAMELS rating of 1 or 2, or, a comparable  
4 regulatory rating that is the substantial equivalent of the  
5 CAMELS rating. Such deposit and certificate of deposit shall be  
6 titled in the name of the clearing entity for the benefit of the  
7 participant, and shall be insured as permitted by any agency of  
8 the federal government that insures deposits in depository  
9 institutions. Any depository institution or intermediary that  
10 fails to comply with these provisions shall forfeit its right to  
11 participate in this program; provided however, the board shall be  
12 the sole and exclusive judge of compliance except as otherwise  
13 provided by provisions in Section 529 of the Internal Revenue  
14 Code and the Internal Revenue Service enforcement of such  
15 section.

16 166.520. 1. The board may enter into deposit program  
17 participation agreements with participants on behalf of  
18 beneficiaries pursuant to the provisions of sections 166.500 to  
19 166.556, including the following terms and conditions:

20 (1) A participation agreement shall stipulate the terms and  
21 conditions of the deposit program in which the participant makes  
22 contributions;

23 (2) A participation agreement shall specify the method for  
24 calculating the return on the contribution made by the  
25 participant as otherwise provided in sections 166.500 to 166.556;

26 (3) The execution of a participation agreement by the board  
27 shall not guarantee that the beneficiary named in any  
28 participation agreement will be admitted to an eligible

1 educational institution, be allowed to continue to attend an  
2 eligible educational institution after having been admitted or  
3 will graduate from an eligible educational institution;

4 (4) A participation agreement shall disclose to  
5 participants the risk associated with depositing moneys with the  
6 board, including information on federal insured deposit  
7 availability and coverage and penalties for withdrawal before the  
8 deposit has matured;

9 (5) Participation agreements shall be organized and  
10 presented in a way and with language that is easily  
11 understandable by the general public; and

12 (6) A participation agreement shall clearly and prominently  
13 disclose to participants the existence of any fee or similar  
14 charge assessed against the accounts of the participants for  
15 administration or services.

16 2. The board shall establish the maximum amount which may  
17 be contributed annually by a participant with respect to a  
18 beneficiary.

19 3. The board shall establish a total contribution limit for  
20 deposit accounts established under the deposit program with  
21 respect to a beneficiary to permit the deposit program to qualify  
22 as a qualified state tuition program pursuant to Section 529 of  
23 the Internal Revenue Code. No contribution may be made to a  
24 deposit account for a beneficiary if it would cause the balance  
25 of all deposit accounts of the beneficiary to exceed the total  
26 contribution limit established by the board. The board may  
27 establish other requirements that it deems appropriate to provide  
28 adequate safeguards to prevent contributions on behalf of a

1 beneficiary from exceeding what is necessary to provide for the  
2 qualified higher education expenses of the beneficiary.

3 4. The board shall establish the minimum length of time  
4 that contributions and earnings must be held by the deposit  
5 program to qualify pursuant to section 166.435. Any  
6 contributions or earnings that are withdrawn or distributed from  
7 a deposit account prior to the expiration of the minimum length  
8 of time, as established by the board, shall be subject to a  
9 penalty pursuant to section 166.530.

10 166.525. All money paid by a participant in connection with  
11 participation agreements shall be deposited as received and shall  
12 be promptly invested by the board or may be directly deposited by  
13 the board's agents. Contributions and earnings thereon  
14 accumulated on behalf of participants in the deposit program may  
15 be used, as provided in the participation agreement, for  
16 qualified higher education expenses.

17 166.530. Any participant may cancel a participation  
18 agreement at will. The board shall impose a penalty equal to or  
19 greater than ten percent of the earnings of an account for any  
20 distribution that is not:

21 (1) Used exclusively for qualified higher education  
22 expenses of the designated beneficiary;

23 (2) Made because of death or disability of the designated  
24 beneficiary;

25 (3) Made because of the receipt of scholarship by the  
26 designated beneficiary;

27 (4) A rollover distribution, as defined in Section  
28 529(c)(3)(C)(i) of the Internal Revenue Code; or

1       (5) Held in the fund for the minimum length of time  
2       established by the board.

3       166.540. The assets of the deposit program shall at all  
4       times be preserved, invested, and expended only for the purposes  
5       set forth in this section and in accordance with the  
6       participation agreements, and no property rights therein shall  
7       exist in favor of the state.

8       166.545. Any rule or portion of a rule, as that term is  
9       defined in section 536.010, RSMo, that is promulgated pursuant to  
10      sections 166.500 to 166.556 shall become effective only if it has  
11      been promulgated pursuant to the provisions of chapter 536, RSMo.  
12      All rulemaking authority delegated prior to August 28, 2003, is  
13      of no force and effect and repealed; however, nothing in this  
14      section shall be interpreted to repeal or affect the validity of  
15      any rule filed or adopted prior to August 28, 2003, if it fully  
16      complied with the provisions of chapter 536, RSMo. Sections  
17      166.500 to 166.556 and chapter 536, RSMo, are nonseverable and if  
18      any of the powers vested with the general assembly pursuant to  
19      chapter 536, RSMo, to review, to delay the effective date, or to  
20      disapprove and annul a rule are subsequently held  
21      unconstitutional, then the grant of rulemaking authority and any  
22      rule proposed or adopted after August 28, 2003, shall be invalid  
23      and void.

24      166.550. The Missouri state auditor shall, on a semiannual  
25      basis, review the financial status and investment policy of the  
26      program as well as the participation rate in the program. The  
27      auditor shall also review the continued viability of the program  
28      and the administration of the program by the board. The auditor

1 shall report the findings annually to the board, which shall  
2 subsequently disclose such findings at a public meeting.

3 166.555. Money accruing to and deposited in individual  
4 deposit accounts shall not be part of total state revenues as  
5 defined in sections 17 and 18 of article X of the Constitution of  
6 the state of Missouri and the expenditure of such revenues shall  
7 not be an expense of state government under section 20 of article  
8 X of the Constitution of the state of Missouri.

9 166.556. All personally identifiable information concerning  
10 participants and beneficiaries of accounts established within the  
11 Missouri higher education deposit program pursuant to sections  
12 166.500 to 166.556 shall be confidential, and any disclosure of  
13 such information shall be restricted to purposes directly  
14 connected with the administration of the program.